

APPEAL NUMBER
2020-00194

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Children and Family Development (ministry) reconsideration decision dated June 29, 2020, which determined the appellant was not eligible for child care subsidy received September 1, 2011 to June 30, 2012 and affordable child care benefit received September 1, 2018 to December 2019, as per sections 1, 3 and 4 of the Child Care Subsidy Regulation.

This resulted in an overpayment of \$18,225.40, which the appellant is required to repay the ministry as per section 7 of the *Child Care Subsidy Act*.

PART D – RELEVANT LEGISLATION

Child Care Subsidy Act (CCSA) sections 1, 4, 5 and 7

Child Care Subsidy Regulation (CCSR) sections 1, 3 and 4

PART E – SUMMARY OF FACTS

Relevant Evidence Before the Minister at Reconsideration

Ministry records show:

On December 5, 2019 the ministry sent the appellant a letter, stating it conducted a review of their file to ensure that child care subsidy (CCS) was issued to persons who were eligible.

On January 16, 2020 the appellant made contact regarding the letter received.

- The ministry advised them the review indicated their spouse and father of their children, was living in the same home as them and his information needed to be added to the file to reassess the past.
- The appellant advised they were not living together, and separated at the beginning of 2017.
- The ministry advised they were required to provide legal documentation proving where their spouse lives.

On January 24, 2020 the ministry received copies of the following documents.

- 2017 Notice of Assessment for appellant's spouse (spouse) from Canada Revenue Agency (CRA)
- Owner's Certificate of Insurance and Vehicle Licences for spouse and appellant
- Pension Statement from appellant's employer
- Benefits Summary from appellant's employer
- Appellant's Communications bill

On February 10, 2020 the ministry sent the appellant a letter, advising none of the information submitted supports where their spouse resided.

On February 24, 2020 the ministry received the following documents.

- Letter written by the son of the landlord - address A (landlord's son) stating the spouse had been a tenant since February 2017 to present day

The ministry contacted the landlord's son and asked if he gave rent receipts to the spouse, and the amount of the rent. He advised the ministry that sometimes he gives the spouse receipts and that the spouse shares the rent with his mother and they each pay \$600 per month.

On March 2, 2020 the ministry sent the appellant a letter:

- Stating it had contacted the landlord's son on February 24, 2020 to verify the information and was told that there was no tenancy agreement in place nor evidence that rent has been paid since February 2017

On March 3, 2020 the ministry received:

- Letter from a paralegal dated February 21, 2020

On March 12, 2020 the ministry received:

- Rent receipts
- Another Letter from the landlord's son

On April 6, 2020 the ministry attempted to contact the landlord to discuss the discrepancy in the rent amount.

- The landlord's older son answered the phone. The ministry enquired if he was aware of a man living at his mother's address, and was advised that his mother lives alone in her condo and did not have a tenant.
- Further that day, the landlord's son called the ministry to enquire why the ministry contacted his brother. The ministry advised the call was to speak to his mother to enquire into the discrepancy in the rent amount. He had previously advised the rent was \$600 per month, however the rent receipts indicate \$550 each month. The landlord's son indicated he did not know why his brother had advised that his mother lived alone as the spouse had been living there since 2017.

On April 16, 2020 the ministry sent the appellant a letter noting that none of the submitted information proved where the spouse was currently residing.

ICBC information indicates the appellant's residence was:

- address C from December 7, 2012
- address E from September 19, 2007 to December 7, 2012

ICBC information indicates the spouse's residence was:

address D from January 25, 2011 to March 4, 2014

Ministry of Health information indicates the appellant's address (physical and mailing) was:

- address C from June 2, 2011 to June 8, 2012
- address D from June 9, 2012 to July 24, 2013

Ministry of Health information indicates the spouse's address (physical and mailing) was:

- address C from April 20, 2011 to June 8, 2012
- address D from June 9, 2012 to May 3, 2014

Documents - Submitted prior to Reconsideration Decision (June 29, 2020)/Part of Ministry Record

CCS and ACB Applications

- Child Care Subsidy Application (July 28, 2011)
Home Address: Address C
Applicant's Marital Status – "I am single, separated, divorced, or widowed" - checked
- Child Care Subsidy Application (May 7, 2012)
Home Address: Address D
Appellant's Marital Status – "Single, separated, divorced, or widowed" – checked
- Affordable Child Care Benefit application (June 2, 2018)
Home Address: Address B
Spouse or Partner Section – crossed off
- Affordable Child Care Benefit application (October 22, 2018)
Home Address: Address B
Marriage or Marriage-like Relationship Status Section – marked Single
- Affordable Child Care Benefit application (August 19, 2019)
Home Address: Address B
Marriage or Marriage-like Relationship Status Section – marked Single

Insurance Corporation of British Columbia (ICBC) Information

- ICBC Owner's Certificate of Insurance and Vehicle (timestamped January 23, 2020)
License Expiry Date – July 25, 2020
Addressed to spouse at address A
- ICBC Owner's Certificate of Insurance and Vehicle License
Expiry Date – February 27, 2020
Addressed to appellant at address B

Consumer Reports

- Consumer Report (April 4, 2019)
Shows current address for the appellant as address B (since July 2013) and former address as address D (since May 2012)
"Spouse" shows the spouse
Shows current address for spouse as address B (since March 2014) and former address as address D (since July 2011)
Bank information shows 4 July, 2013 - 28 February 2019 – Joint
- Consumer Report (March 2, 2020)
Shows current address for appellant as address B (since July 2013) and former address as address D since May 2012
Shows current address for spouse as address D (since July 2011) and former address as B (since March 2014)

Land Titles documents

- Land Titles Office mortgage document (dated July 4, 2013)
Confirming mortgagors as the appellant and their spouse, as joint tenants
- Title Search print (28 March, 2019)
Registered Owner/Mailing address: appellant and spouse at address B, as joint tenants as of July 4, 2013

Information from Appellant's Employer

- Pension Statement from the appellant's employer (not dated (n.d.)
shows the beneficiary as "Parent", benefit % - 100%.
- Benefits Summary from appellant's employer (January 24, 2020)
Shows medical coverage for one adult or one adult with children

Documents from Landlord

- Letter from the landlord's son, on behalf of the landlord (n.d.)
Stating they are the landlord of address A, and confirming that the spouse has been a tenant at this address since February 2017 to present day

- Rent payment slips (January 1, February 1 and March 1, 2020)
\$550 for each month
Received from spouse
Note: rent for address A
- ID card for landlord
- BC Hydro bill for landlord (November 8, 2019)
- Letter from landlord's son on behalf of the landlord (n.d.)
Confirming the spouse has been a tenant and paying monthly rent since February 2017 to present day at address A
The landlord did not sign a tenancy agreement because they knew him. He is paying rent every month since February 2017.

Information from Children's Schools

- School Information for child 2– (n.d.)
Parental situation -“Lives with : both parents...”
Address for both parents shown as address B
- Application for admission to a school for child 1 (April 20, 2018)
Emergency Consent Card
“Child lives with: parents”
Both parents listed as Parent/Guardian - contact information (both at address B)
- Letter from paralegal to ministry (February 21, 2020)
Confirming she has been providing the appellant with guidance and broad consultation as to their legal rights as a common-law spouse under the *Family Law Act*
They initially met around June 2017, where the appellant disclosed their separation from their spouse being on or around January 2017.
- CRA Notice of Assessment
Date issued – August 27, 2018
Tax year 2017
“separated”
Addressed to spouse at address A
- Communications Bill (November 28, 2019)
Addressed to appellant at address B

Letters between appellant and ministry

- Letter from ministry to appellant (February 10, 2020)
Advising them none of the information submitted supports where their spouse resided
- Letter from ministry to appellant (March 2, 2020)
Advising contact was made with the landlord's son who advised there is no tenancy agreement in place nor evidence that rent has been paid since February 2017

- Letter from appellant to ministry (March 11, 2020)
A tenancy agreement is not a legal requirement that needs to be filled out between landlords and tenants.
- Letter from ministry to appellant (April 16, 2020)
Advising them none of the submitted documents proves where their spouse is currently residing and the amount of \$550 on the three receipts do not match the amount of rent that the landlord's son confirmed on February 24, 2020 - one week before March 1. These receipts were all written in March 2020 after the final debt notification was issued.

Documents - Submitted with the Request for Reconsideration (May 10, 2020)/Part of Ministry Record

- CRA 2010 Notice of Assessment - no name
Filing date: April 30, 2011
Marital status - single
- CRA 2012 Notice of Assessment - no name
Filing date: March 17, 2013
Marital status - single
- CRA 2017 Notice of Assessment - no name
Filing date: April 20, 2018
Marital status - single

Reason for Request for Reconsideration

The appellant states they are a single parent with full-time work, online school and two young children to take care of. Their former common-law partner does not live with them nor does he contribute towards any provisions for the children. There is no dispute between them over matters of their children and the appellant has full custody of their children. They are with the appellant seven days a week.

The house, located at address B in which the appellant lives with their children, was initially purchased under both names in 2013 when they were in a common-law relationship. It has not been sold; therefore, both names remain on all official property bills and documents. After their separation in 2017 they discussed the impact on their children. For a number of reasons, (including economic, real estate, their financial situations, cultural stigma and most importantly due to their children's young age), they concluded that it was in the best interest for everyone not to sell the house for a period of time. They both agreed that the appellant and their children could continue living in the house as long as the appellant continued paying all the bills, including the mortgage, and expenses for the children.

Legally, as the spouse has equal ownership of the house, this cannot be changed, nor does the appellant want to force him to remove address B he has listed as his mailing address on some of his documents. They are in the process of resolving their issues in a private manner and out of court.

The appellant also states they left the country on Dec 16, 2019 and informed their spouse about their absence. As he still has ownership of the house and for security reasons they have to notify him when they vacate the house and go on vacation. Canada Post left a slip at the house notifying the appellant that a package was available for pick up. Their spouse then went to pick up the package and since his

driver's licence (which was renewed in March 2017) still had their current living address B on it, the post office handed him the package. This does not prove that he resides at address B. It is not mandatory that the mailing address is the same as the living address.

The appellant also states the paralegal who wrote the letter (February 21, 2020) is a neighbour to their former caregiver.

In addition, the appellant states their marital status on their CRA tax documents, prior to fall of 2012 was single. In the fall of 2012, the status was changed to common-law. As well, the appellant's taxes filed on April 30, 2011 show their status as single.

The appellant states the landlord's son stated he had mentioned to the ministry that he would confirm with the landlord the exact amount of rent as the rent is collected by her. He later confirmed the rent was \$550 a month.

The appellant states they are a single parent struggling with finances and do not have \$18,000, nor believe it is something that they have to pay back. They confirm they are entitled to the subsidy.

Additional Information

Appellant

Documents – Submitted by the Appellant, with the Notice of Appeal (July 20, 2020)

- Letter from bank (August 27, 2020)
Confirming the appellant's personal deposit accounts are under sole ownership with the exception of an account, which is joint with their first child (child 1)
The account was opened February 1, 2002 and the ownership is sole - no name has been added/removed in the past.
- Letter from paralegal (August 31, 2020)
Clarifying that they provided information on an informal basis and not as an official representative
- CRA tax documents for spouse
T1 (2019) shows "separated" and address A under "Identification"
2018 T1 summary shows "separated" and address A under "Identification"
2017 T1 summary shows "separated" and address A under "Identification"
- CRA tax documents for appellant
2018 T1 summary shows "separated" and address B under "Identification"
Income Tax and Benefit Return (T1 General 2017) and address B under "Identification"
- School Information for appellant's second child (child 2)(n.d.)
"Parental situation Lives with: one parent..."
- Letter from spouse
Stating he did not give any financial help to the appellant for his children for 2011-2012 and 2017, 2018 and 2019. In 2012 he did not live in Canada. From 2017, after the separation he lived at address A. He agreed the appellant and children could live at address B.

- Travel arrangements document for spouse (December 29, 2011)
Travel details – British Columbia city to US city (January 1, 2012)

Notice of Appeal Summary

The appellant states the ministry assumes a separation has to end in both sides splitting everything, changing all records, and announcing the separation. The main concern seems to be the mailing address as well as the children's school forms, where the appellant had not changed the information about whether the children resided with both parents or just the appellant. As the matter has not gone to court, they wanted to keep matters to themselves and not inform the school as they did not want any negative impact on their children. Since the audit began, the appellant realized this was an issue and made the decision to inform both their children's school and daycare to update their records. They state the daycare information has been updated (n.d.) but their son's school is closed and so they had to wait until they reopen to have them change and update the information.

The reconsideration decision incorrectly indicated that both the spouse and appellant have a joint bank account. The letter from the bank confirms they never had a joint account. The consumer report data that shows the joint account during July 2013 is the account used to apply for a mortgage in order to purchase the home together.

The information regarding addresses and dates do not match or correspond with each other, nor do they prove these organizations had updated information about where the appellant and spouse resided at any given time. The only thing this information indicates is that mailing addresses with these organizations were not up to date and accurate. The consumer report only gets updated when a credit check is done (address could be mailing or living).

The appellant states they resided at address C, September 2011 to May 2012, and at address D, May 2012 to September 2012. This latter period was when their spouse moved out and was not in the country. The spouse resided at address D, for a short period in 2011, while they lived at address C. The information from ICBC is incorrect. From September 2011 – May 2012, the appellant resided at address C, and not at address E, until December 2012. A conclusion can be drawn that agencies and organizations data/records are not accurate nor up to date.

Ministry

The ministry's submission was the reconsideration summary provided.

The panel determined that the additional information is reasonably required for a full and fair disclosure of all matters related to the decision under appeal and therefore is admissible under section 22(4) of the *Employment and Assistance Act*.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is:

Whether the ministry's reconsideration decision, which determined that the appellant was not eligible for child care subsidy received September 1, 2011 to June 30, 2012 and affordable child care benefit received September 1, 2018 to December 2019, as per sections 1, 3 and 4 of the CCSR was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

As section 5 of the CCSA states, "The minister's decision about the amount a person is liable to repay...is not open to appeal...", the amount of the overpayment is outside the panel's jurisdiction.

Relevant Legislation

Child Care Subsidy Act

Definitions

1 In this Act:

"child care subsidy" means a payment made under this Act to or for a parent to subsidize the costs of child care;

"parent" includes a person with whom a child resides and who stands in place of a parent of the child.

Child care subsidies

4 Subject to the regulations, the minister may pay child care subsidies.

Information and verification

5 (1) For the purpose of determining or auditing eligibility for child care subsidies, the minister may do one or more of the following:

(a) direct a person who has applied for a child care subsidy, or to or for whom a child care subsidy is paid, to supply the minister with information within the time and in the manner specified by the minister;

(b) seek verification of any information supplied by a person referred to in paragraph (a);

(c) direct a person referred to in paragraph (a) to supply verification of any information supplied by that person or another person;

(d) collect from a person information about another person if

(i) the information relates to the application for or payment of a child care subsidy, and

(ii) the minister has not solicited the information from the person who provides it.

(2) A person to or for whom a child care subsidy is paid must notify the minister, within the time and in the manner specified by regulation, of any change in circumstances affecting their eligibility under this Act.

- (3) If a person fails to comply with a direction under subsection (1) (a) or (c) or with subsection (2), the minister may
- (a) declare the person ineligible for a child care subsidy until the person complies, or
 - (b) reduce the person's child care subsidy.
- (4) For the purpose of auditing child care subsidies, the minister may direct child care providers to supply the minister with information about any child care they provide that is subsidized under this Act.

Overpayments, repayments and assignments

7 (1) If a child care subsidy is paid to or for a person who is not entitled to it, that person is liable to repay to the government the amount to which the person was not entitled.

...

- (5) The minister's decision about the amount a person is liable to repay under subsection (1) or under an agreement entered into under subsection (2) is not open to appeal under section 6 (3).

Child Care Subsidy Regulation

Definitions – prior to September 1, 2018

1 (1) In this regulation:...

"dependant", in relation to a parent, means anyone who resides with the parent and who

- (a) is the spouse of the parent,
- (b) is a dependent child of the parent,
- (c) shares with the parent income or assets or any necessities of life obtained with the income or assets, or

(d) indicates a parental role for the parent's child;

"spouse", in relation to a parent, means anyone who

- (a) is married to the parent, or
- (b) is living with the parent in a marriage like relationship;

Definitions – after September 1, 2018

1 (1) In this regulation:...

"dependant", in relation to a parent, means anyone who resides with the parent and who

- (a) is the spouse of the parent, or
- (b) is a dependent child of the parent;...

"family" means a parent and the parent's dependants;

"spouse", in relation to a parent, means a person, including a person of the same gender, who resides with the parent and

- (a) who is married to the parent,
 - (b) who, together with the parent, acknowledges to the minister that he or she is residing with the parent in a marriage-like relationship, or
 - (c) who
 - (i) has been residing with the parent for at least
 - (A) the previous 3 consecutive months, or
 - (B) 9 of the previous 12 months, and
 - (ii) has a relationship with the parent that the minister is satisfied demonstrates
 - (A) financial dependence or interdependence, and
 - (B) social and familial interdependence,
- consistent with a marriage-like relationship;

Circumstances in which subsidy may be provided

- 3** (1) The minister may pay a child care subsidy only if
- (a) the minister is satisfied that the child care is needed for one of the reasons set out in subsection (2)

...

- (2) For the purpose of subsection (1) (a), the child care must be needed for one of the following reasons:
- (a) in a single parent family, because the parent
 - (i) is employed or self-employed,
 - (ii) attends an educational institution,
 - (iii) is seeking employment or participating in an employment-related program, or
 - (iv) has a medical condition that interferes with the parent's ability to care for his or her child;
 - (b) in a two parent family, because
 - (i) each parent is employed or self-employed, attends an educational institution or participates in an employment-related program,
 - (ii) one parent is engaged in an activity listed in subparagraph (i) and the other is seeking employment,

(iii) one parent is engaged in an activity listed in subparagraph (i) and the other parent has a medical condition that interferes with that parent's ability to care for his or her child,
or

...

How to apply for a subsidy

4

- (1) To be eligible for a child care subsidy, a parent must
- (a) complete an application in the form required by the minister,
 - (b) supply the minister with the social insurance number of the parent and the parent's spouse, if any, and
 - (c) supply the minister with proof of the identity of each member of the family and proof of eligibility for a child care subsidy.
- (2) Only one parent in the family may apply for a child care subsidy.

Appellant Argument

The appellant argues that information regarding addresses and dates do not correspond with each other, nor do they prove these organizations had updated information about where the appellant and spouse resided at any given time. The only thing this information indicates is that mailing addresses with these organizations were not up to date and accurate. The appellant added they did not think it was important to make legal changes or updates to most of their records.

The appellant also argues that the ministry assumes a separation has to end in both sides splitting everything, changing all records, and announcing the separation. As the matter has not gone to court, they wanted to keep matters to themselves and not inform the school as they did not want any negative impact on their children. As well, legally their spouse has equal ownership of address B and they don't want to force him to remove the address he has listed as his mailing address on some of his documents. It is not mandatory that the mailing address is the same as the living address.

Ministry Argument

The ministry's position is that the appellant did not indicate their spouse on any of their CCS applications. They applied as a single parent and the CCS/ACCB were incorrectly issued based on that information.

CCS - September 1, 2011 – June 30, 2012

The information on the consumer reports, and from ICBC and Ministry of Health states the appellant and their spouse were both residing at either address C or D from September 1, 2011 – June 30, 2012. The ministry argues the appellant's relationship with their spouse met the definition of "dependent" and "spouse" while they were in receipt of CCS - September 1, 2011 to June 30, 2012. As well, the ministry argues that as the spouse indicated a parental role to child 1, because he is the child's father, and as the appellant was residing with child 1 and the spouse, the ministry concluded the appellant was living in a marriage like relationship. Although the appellant submitted a portion of an income tax notice of assessment in which they note common-law status from the fall of 2012 until 2017, the ministry states

CRA's requirement for common-law status is not the same as the ministry's definition of "dependent" and "spouse".

The ministry therefore concluded that the appellant and the spouse were residing together and in a marriage like relationship.

ACCB - September 1, 2018 – December 31, 2019

The ministry's position is that ICBC and Ministry of Health records, information on the consumer reports, property assessment for address B, the banking information and the children's school registration records all indicate that the address for the appellant and their spouse was address B for the period of September 1, 2018 to December 31, 2019.

The ministry adds that none of the information submitted supported where their spouse resided.

- The 2017 CRA information could not be used because 2017 was not under review. Further, the ministry received confirmation from CRA that they allow tax filers to use any address within their province when filing taxes.
- The spouse's Certificate of Insurance and Vehicle Licence was changed on January 23, 2020 confirming his vehicle was now parked at a different address as of that date.
- There were no rules about who a person's beneficiary can be.
- The letter from the paralegal did not provide evidence of where the spouse resided.
- The appellant's medical coverage does not provide evidence of where the spouse resided.
- The amount of \$550 for each of the three receipts does not match the amount of rent that the landlord's son confirmed on February 24, 2020 - one week before March 1. These receipts were all written in March 2020 after the final debt notification was issued.

The ministry also argues the inconsistencies provided by the landlord's son, his brother and the appellant's comments, as to why their spouse continued to use address B, make it difficult for the ministry to be satisfied that the spouse has resided at address A from February 2017 to present.

And, although the appellant provided a Communications bill in the appellant's name, the ministry argues they have not provided any information to indicate that they alone are responsible for paying all the bills and caring for the children's expenses. Therefore, the ministry concluded the relationship with the spouse demonstrates a financial dependence or interdependence consistent within a marriage like relationship.

The ministry also argues that as the appellant and spouse agreed to keep their separation private advising the children's schools that their father still resides with them and their children, this further demonstrates a social and familial interdependence consistent with a marriage like relationship.

The ministry argues further that on October 22, 2018 and August 19, 2019, the appellant completed ACCB applications indicating they were residing at address B. The information received from the Ministry of Health, and ICBC, consumer reports land titles, mortgage documents, and the children's school registrations all indicate that the appellant and their spouse had been residing at address B since purchasing the home in July 2013. The ministry adds that on December 17, 2019 Canada Post confirmed receipt of the letter sent by the ministry dated December 5, 2019 indicating the spouse signed for receipt of the ministry's letter on December 16, 2019.

The ministry therefore concluded that the appellant and the spouse have been residing together for at least three consecutive months prior to the applications and the ministry is satisfied the relationship

demonstrates a financial dependence or interdependence and a social and familial interdependence consistent with a marriage like relationship.

Analysis

Sections 1, 3 and 4, CCSR – when subsidy may be provided and how to apply

Section 4 of the CCSR states that to be eligible for child care subsidy, a parent must complete an application, supply the ministry with the social insurance number of the parent and the parent's spouse, if any, and supply the minister with proof of identity of each member of the family and proof of eligibility for a child care subsidy.

The panel notes that on all of the CCS and ACB Applications, the marital status of the appellant is indicated as "single" (as not having a spouse).

Section 1 of the CCSR provides a definition for "dependant" and "spouse". In order for the spouse to meet the definition of "dependant" and "spouse" the spouse must, among other requirements, be residing with the appellant.

CCS - (September 1, 2011 – June 30, 2012)

The appellant argues the information regarding addresses and dates do not correspond with each other nor do they prove these organizations had updated information about where they and their spouse resided at any given time. Therefore, the appellant's position is that agencies and organizations data/records are not accurate nor up to date.

The ministry argues the information received from several organization state that both the appellant and their spouse were residing at either address C or D during September 1, 2011 – June 30, 2012.

The panel notes:

- ICBC information shows the spouse lived at address D from January 25, 2011 to March 4, 2014.
- Ministry of Health information shows the appellant and their spouse both residing at address C from June 2, 2011 to June 8, 2012, and at address D from June 9, 2012 to July 24, 2013.
- Consumer reports show the appellant and their spouse both residing at address D from May 2012 to July 2013.
- The CSS application, signed by the appellant on May 7, 2012, shows their home address as D, the same as the address for the spouse on the consumer report (April 4, 2019).

The panel gives less weight to the CRA documents (2010 and 2012) as there is no name on the documents. The panel also gives less weight to the letter from the spouse and the travel arrangements document as there is no information as to where the appellant was living or timeframes on these documents. The panel gives greater weight to the information from the Ministry of Health, ICBC and the consumer reports as these documents contain specific addresses and timeframes.

The panel finds that even though the dates do not match exactly, there is sufficient evidence to indicate that both the appellant and their spouse were residing at the same addresses (C and then D) from June 2, 2011 to July 24, 2013, during the period the appellant received the CSS (September 1, 2011 - June 30, 2012).

As the panel finds the appellant and their spouse were residing in the same residence, with their child (child 1), between September 1, 2011 and June 30, 2012, the spouse meets the definition of “dependent” and “spouse” as per section 1 of the CCSR – “anyone who resides with the parent” and “who indicates a parental responsibility for the parent’s child” and “is living with the parent in a marriage-like relationship”. In making this determination, the panel relied on evidence (specific dates) from the ministry record (Ministry of Health, ICBC) and the consumer reports that show the appellant and spouse were residing in the same residence with their child (child 1) between September 1, 2011 and June 30, 2012. As well, the panel relied on ministry information showing the spouse indicated a parental role to child 1 because he is the child’s father - indicating a “parental responsibility for the parent’s child. The panel found no evidence from the appellant refuting this statement. The panel also found that the spouse living in the same residence for ten months, with the appellant and spouse’s child meets the definition for a marriage like relationship. Although the appellant stated, in their request for information, their marital status on their CRA tax documents prior to fall of 2012 was single, the panel found as the CRA documents attached didn’t include a name, the panel gave little weight to this evidence.

The panel therefore determines the ministry reasonably concluded that the appellant was not entitled to CCS between September 1, 2011 and June 30, 2012, as per sections 1 and 3 of the CCSR.

And, as the appellant signed the CSS applications (July 28, 2011 and May 7, 2012) as a single parent and therefore did not provide the ministry with the information for the entire family, the panel finds the ministry reasonably determined they are not entitled to CCS from September 1, 2011 to June 30, 2012, as per section 4 of the CCSR.

ACCB - (September 1, 2018 to December 2019)

The appellant argues that the ministry assumes a separation has to end in both sides splitting everything, changing all records, and announcing the separation. As the matter has not gone to court, they wanted to keep matters to themselves and not inform the school as they did not want any negative impact on their children.

The appellant also argues that legally their spouse has equal ownership of address B. They don’t want to force him to remove the address he has listed as his mailing address on some of his documents. And, it is not mandatory that the mailing address is the same as the living address.

The ministry argues none of the information submitted supports where their spouse resided. The inconsistencies provided by the landlord’s son, his brother and the appellant’s comments as to why their spouse continued to use address B, make it difficult for the ministry to be satisfied that the spouse has resided at address A from February 2017 to present.

The panel notes the title search print (March 28, 2019) shows the appellant and spouse as registered owners and joint tenants at address B. The consumer report (April 4, 2019) shows the current address for both the appellant and their spouse as address B (since July 2013 and March 2014 respectively). As well, school information for child 2 shows “Parental situation -“Lives with : both parents...and the address for both parents as address B. An application for admission to a school for child 1 (April 20, 2018) shows, “Child lives with: parents” and both parents are listed as parent contacts, both at address B. The appellant explains their address was the same as their spouse’s as they wanted to keep matters to themselves as they didn’t want any negative impact on their children.

The panel also notes inconsistencies in the information as to where their spouse lived (whether there was a tenant at address A and difference in rent amounts). And, ministry records show the rent receipts

were written in March 2020, after the final debt notification was issued and there was no tenancy agreement in place.

Due to the inconsistencies in the information, the panel gives less weight to the information from the landlord and greater weight to the land titles document, consumer reports and school documents as to where the spouse lived from September 1, 2018 to December 31, 2019, as these documents provide specific addresses and timeframes.

As well, the panel notes that although the CRA documents (August 27, 2018) and 2019 are addressed to the spouse at address A, they are given little weight as ministry records show the ministry received confirmation from CRA that they allow tax filers to use any address within their province when filing taxes. The tax documents, submitted with the Notice of Appeal are given little weight as these documents do not show when the taxes were filed. And, little weight is given to the school information for child 2, that child 2 lives with one parent, as this information was provided after the ministry made its determination. The letters from the paralegal are given little weight as they were written by the appellant's former caregiver's neighbour, stating she was providing information on an informal basis. The communications bill, pension statements, letter from the bank, the landlord's ID, and BC Hydro bill are all given little weight as none of these documents show where the spouse was residing. The ICBC information (timestamped January 23, 2020) is also given little weight as the date is after the period in question.

As a result, the panel finds the appellant and their spouse were both residing at address B, with their children for the period September 1, 2018 to December 31, 2019.

Therefore, the panel finds as per section 1 of the CCSR, the spouse meets the definition of "dependant" "...anyone who resides with the parent..." and "who is the spouse...residing with the parent for at least the previous 3 consecutive months, or 9 of the previous 12 months". In making its determination, the panel relied on the following evidence: title search print (March 28, 2019) shows the appellant and spouse as registered owners and joint tenants at address B; consumer report (April 4, 2019) shows the current address for both the appellant and their spouse as address B (since July 2013 and March 2014 respectively); school information for child 2 shows "Parental situation - "Lives with : both parents...and the address for both parents as address B; application for admission to a school for child 1 (April 20, 2018) shows, "Child lives with: parents" and both parents are listed as parent contacts, both at address B. Therefore, the panel determined when the appellant completed their application on October 22, 2018 that the appellant and spouse resided at the same address B from at least April 2018 (more than three months prior to the date of the application).

In addition, due to the inconsistent information, little weight was given to the information that the spouse resided at address A since February 2017. Therefore, the panel found insufficient evidence to show the spouse had another residence during the period in question. The panel found the evidence from the children's schools stating the children live with both parents also demonstrates that the appellant and spouse were parents to the children, living together as a family at address B.

The appellant does not refute that they and their spouse used the same address.

In the appellant's request for reconsideration, they stated that for "a number of reasons, (including economic, real estate, their financial situations, cultural stigma and most importantly due to their children's young age), they concluded that it was in the best interest for everyone not to sell the house for a period of time", and they also advised the children's schools the children were living with both parents. They both agreed that the appellant and their children could continue living in the house as long as the appellant continued paying all the bills and expenses for the children. The panel relied on this

information in making its determination that this created a financial and social and familial interdependence consistent with a marriage like relationship.

The panel also finds that, even though the spouse stated in a letter (n.d.) that he did not provide any financial help for his children, as he owns part of the home the children live in, he is contributing financially, and therefore creating a financial interdependence. And, as the spouse indicated in his letter (n.d.) that he did not give any financial support to the appellant for their children for 2011-12, and 2017, 2018 and 2019 and the appellant stated they agreed the appellant would pay all the bills, including the mortgage, the panel also finds this indicates a financial dependency for the spouse.

The panel therefore finds that the spouse has a relationship with the appellant which, "...demonstrates financial dependence or interdependence and social and familial interdependence, consistent with a marriage like relationship". As well, the panel finds the family meets the definition of family, "a parent and the parent's dependants".

The panel therefore determines that the ministry reasonably concluded that the appellant was not entitled to ACCB under section 1 and 3 of the CCSR between September 1, 2018 and December 31, 2019.

And as the appellant signed the ACCB applications (October 22, 2018) and (August 19, 2019) as a single parent and therefore did not provide the ministry with the information for the entire family, the panel finds the ministry reasonably determined they are not entitled to ACCB from September 1, 2018 to December 31, 2019, as per section 4 of the CCSR.

Conclusion

In conclusion, the panel finds the ministry decision that the appellant was not eligible for child care subsidy received September 1, 2011 to June 30, 2012 and affordable child care benefit received September 1, 2018 to December 2019, as per sections 1, 3 and 4 of the Child Care Subsidy Regulation, is reasonably supported by the evidence.

The appellant is not successful on appeal.

APPEAL NUMBER
2020-00194

PART G – ORDER

THE PANEL DECISION IS: (Check one) UNANIMOUS BY MAJORITY

THE PANEL CONFIRMS THE MINISTRY DECISION RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister
for a decision as to amount? Yes No

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

and

Section 24(2)(a) or Section 24(2)(b)

PART H – SIGNATURES

PRINT NAME

Connie Simonsen

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/10/01

PRINT NAME

Daniel Chow

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/10/01

PRINT NAME

Dawn Martin

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/10/01